

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1169

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
PMS

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

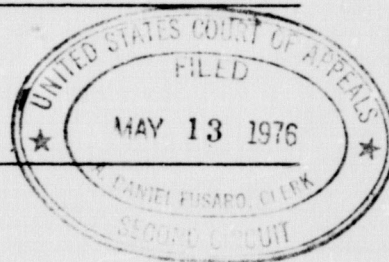
vs.

DAVID LEE WILLIAMS, a/k/a "David Lattimore
Williams," "Donald Fernandez," "Samuel
Johnson," "Louis Jackson," "Darry L. Williams,"
and "Darry Larry Williams,"

Defendant-Appellant

On Appeal from the United States District Court,
Southern District of New York

JOINT APPENDIX



JOHN H. DOYLE, III
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JOHN E. DANIEL
Of Counsel

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PAGINATION AS IN ORIGINAL COPY

Felony or Offense ☐ Misdemeanor ☐ **0208 1** District Office

No. of **02** Defendants

CHARGES

18:371
18:1014, 2

Offenses
Consp. to commit off. against U.S.
False Statements on a bank loan appl.

COUNTS
1
2-8
MAGR. CASE NO. 75-1212
BAIL RELEASE
☐ Personal Rec.
☐ Unsecured B.
AMT. Conditional Rel.
Set (000) \$
10% Dr.
Surety
Collate
Bail Not Made
Bail Status Changed (See Docket)
3rd Par Custod
PSA

KEYS

Ira L. Block, AUSA
(212) 791-1916

ARREST	APPOINTMENT	TRIAL	SENTENCE
10-16-75			

RATE

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District GJ <input type="checkbox"/> Held to Answer to U. S. District Court AT: _____ Magistrate's Initials: _____
Summons	Issued			<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment		
	Served					
Arrest Warrant						
COMPLAINT		08-29-75	MDJ 080B	Tape No.	INITIAL/No.	
OFFENSE (In Complaint)						

Show last names and suffix numbers of other defendants on same indictment/information		V. Excludable Def.	
DATE	PROCEEDINGS	(a)	(b) (c)
10-16-75	Indictment. Referred to MacMahon, J. as being related to 75 Cr. 890-IFM. PALMERI, J.		
10-16-75	Pre-Trial Conference held. Deft pleads NOT GUILTY. Trial set for 11-24-75 @ 10AM -- MacMAHON, J.		
10-22-75	Filed the following papers rec'd from Magistrate Jacobs: Docket Entry Sheet - Criminal Complaint - Disposition Sheet - Financial Affidvt (CJA23) - Order Appointing Counsel, Legal Aid - Magistrate's Temporary Commitment.		
11-14-75	Filed Order that Dr. Stanley Portnow, a qualified psychiatrist, examine the Deft for the purpose of determining the Deft's mental responsibility at the time of the offense as stated in this Indictment, and as so further indicated. Ordered that the office of the U.S. Atty for the SDNY be directed to pay a reasonable fee for the performance of the service's so indicated. ---MacMAHON, J.		
11-25-75	Filed Order that Dr. Ameliese A. Pontius, a qualified psychiatrist, be substituted in place of Dr. Stanley Portnow in the order of the Court filed herein on 11-14-75. ---MacMAHON, J.		
12-19-75	Filed transcript of record of proceedings, dated Oct. 16, 1975		

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-16-76	DAVID LEE WILLIAMS=Filed affdvt & notice of motion to d'smiss the indictment. Ret. 1-23-76 (Pursuant to Rule 12(b)).				
1-16-76	DAVID LEE WILLIAMS=Filed memo of law in support of motion.				
1-22-76	Filed Gov't memo of law in opposition to def't's motion to dismiss the Indictment.				
3-18-76	Filed Memo-End. on def't's motion dtd 1-16-76. Motion denied. See Opinion of this date.....MAC MAHON, J m/n				
3-18-76	Def't moves under Rule 12(b) FRCP to dismiss the indictment on the ground that a trial would violate his constitutional right not to be put in jeopardy twice for the same offense. For the many reasons indicated, the def't's motion to dismiss the indictment is denied in all respects.....So Ordered, MAC MAHON, J m/n (OPINION #44093)				
3-24-76	Filed notice of appeal to the USCA from the order of the USDC denying a motion to dismiss the indictment. Copy sent to U.S. Att'y & def't David Lee Williams, 204 W. 105th St., New York, N.Y.				
4-13-76	Filed Stipulation that a copy of the indictment be transmitted to the USCA in lieu of the missing original.				
4-13-76	Filed notice that original record on appeal has been Certified & transmitted to the USCA.				
4-13-76	Filed transcript of proceedings dtd 11-24-75.				
4-13-76	Filed con't transcript of proceedings dtd 11-24-75.				
4-23-76	Filed affdvt of def't & Order that the conditions of release of def't David Lee Williams are hereby amended & said def't is granted permission to travel to & from the Eastern Dist. of N.Y. as well as the So. Dist. of N.Y.....MAC MAHON, J. m/n				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-v-

DAVID LEE WILLIAMS, a/k/a "David
Lattimore Williams," "Donald Fernandez,"
"Samuel Johnson," "Louis Jackson,"
"Darry L. Williams" and "Darry Larry
Williams;" and JOSE SANCHEZ,

Defendants.

:
: INDICTMENT

: S 75 Cr. 992
:

-----x
COUNT ONE

The Grand Jury charges:

1. From on or about the 18th day of March, 1975 up to and including the date of filing of this indictment, in the Southern District of New York, DAVID LEE WILLIAMS, also known as "David Lattimore Williams", "Donald Fernandez," "Samuel Johnson," "Louis Jackson," "Darry L. Williams" and "Darry Larry Williams;" and JOSE SANCHEZ, the defendants, and others to the Grand Jury unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agreed together and with each other to violate Section 1014 of Title 18, United States Code.

2. It was part of said conspiracy that the said Defendants and their co-conspirators unlawfully, wilfully and knowingly would make and cause to be made false statements and reports for the purpose of influencing the action of Manufacturers Hanover Trust Company and First National City Bank, the deposits of each which were then insured by the Federal Deposit Insurance Corporation, upon applications for loans and credit submitted to said banks by said defendants.

OVERT ACTS

4a

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about March 13, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "David Lattimore Williams."
2. On or about April 22, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "Donald Fernandez."
3. On or about May 13, 1975, the defendant JOSE SANCHEZ submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "Jose P. Sanchez."
4. On or about June 7, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "Samuel Johnson."
5. On or about July 1, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "Louis Jackson."
6. On or about July 1, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to First National City Bank, the name of the applicant being listed thereon as "Derry L. Williams."

On or about July 18, 1975, the defendant DAVID LEE WILLIAMS submitted a loan application containing false information to Manufacturers Hanover Trust Company, the name of the applicant being listed thereon as "Darry Larry Williams."

(Title 18, United States Code, Section 371.)

COUNTS TWO AND THREE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, DAVID LEE WILLIAMS, also known as "David Lattimore Williams," "Donald Fernandez," "Samuel Johnson," "Louis Jackson," "Darry L. Williams" and "Darry Larry Williams," the defendant, unlawfully, wilfully and knowingly made false statements and reports for the purpose of influencing the action of the following banks, the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications for loans and credit submitted in the names set forth below:

<u>COUNT</u>	<u>NAME IN WHICH THE APPLICATION WAS SUBMITTED</u>	<u>APPROXIMATE DATE</u>	<u>BANK</u>
2	David Lattimore Williams	March 18, 1975	Manufacturers Hanover Trust Co.
3	Donald Fernandez	April 22, 1975	Manufacturers Hanover Trust Co.

(Title 18, United States Code, Section 1014.)

COUNTS FOUR THROUGH EIGHT

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, DAVID LEE WILLIAMS, also known as "David Lattimore Williams," "Donald Fernandez," "Samuel Johnson," "Louis Jackson," "Darry L. Williams" and "Darry Larry Williams;" and JOSE SANCHEZ, the defendants, unlawfully,

statements and reports for the purpose of influencing the action of the following banks, the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon applications for loans and credit submitted in the names set forth below:

<u>COUNT</u>	<u>NAME IN WHICH THE APPLICATION WAS SUBMITTED</u>	<u>APPROXIMATE DATE</u>	<u>BANK</u>
4	Josa P. Sanchez	May 13, 1975	Manufacturers Hanover Trust Co.
5	Samuel Johnson	June 7, 1975	Manufacturers Hanover Trust Co.
6	Louis Jackson	July 1, 1975	Manufacturers Hanover Trust Co.
7	Darry L. Williams	July 1, 1975	First National City Bank
8	Darry Larry Williams	July 10, 1975	Manufacturers Hanover Trust Co.

(Title 18, United States Code, Section 1014 and 2.)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
UNITED STATES OF AMERICA

: 75 Cr. 992-LFM
:

-v-

: OPINION
:

DAVID LEE WILLIAMS,

:
Defendant. :
-----x

APPEARANCES:

Anderson Russell Kill & Olick, P.C.
Attorneys for Defendant
630 Fifth Avenue
New York, N.Y. 10020
By: John H. Doyle, III, Esq.

Thomas J. Cahill, Esq.
United States Attorney for the
Southern District of New York
Attorney for United States of America
United States Courthouse Annex
One St. Andrew's Plaza
New York, N.Y. 10007

By: Allen R. Bentley, Esq. and
Ira H. Block, Esq., Asst.
U.S. Attorneys.

MacMAHON, District Judge.

Defendant moves under Rule 12(b), Fed.R.Crim.P.,
to dismiss the indictment on the ground that a trial would

violate his constitutional right not to be put in jeopardy twice for the same offense.

Defendant contends that, since a mistrial was declared sua sponte by the court during the opening statement of his attorney, he cannot be tried again without being deprived of his right to have his guilt or innocence determined by the first jury. The government contends that, since the mistrial was declared by the court for the benefit of defendant, the double jeopardy clause does not bar reprosecution.

The Fifth Amendment to the constitution prohibits the government from putting any person in jeopardy twice for the same offense. Its purpose is to prevent the state, with all of its supposed resources and power, from making successive attempts to convict an individual, repeatedly subjecting him to the expense and ordeal of trial, and increasing the possibility¹ that, even though innocent, he will be found guilty. The state may, however, retry a defendant when the court is required to discharge the jury in the first proceeding because of manifest necessity or the ends² of justice. The circumstances under which such action

is appropriate is left to the sound discretion of the trial judge. Defendant's motion, therefore, must be denied if we were obliged to abort the first trial in the interest of justice.

In Gori v. United States,³ the trial court declared a mistrial on its own motion when the government asked questions of its witness which might have disclosed other crimes committed by the accused. The Court of Appeals characterized the prosecutor's conduct as unexceptional and the declaration of the mistrial as premature; nevertheless, the action of the trial judge to protect the rights of the accused was sustained.⁴ The Supreme Court affirmed:

"Where, for reasons deemed compelling by the trial judge, who is best situated intelligently to make such a decision, the ends of substantial justice cannot be attained without discontinuing the trial, a mistrial may be declared without the defendant's consent and even over his objection, and he may be retried consistently with the Fifth Amendment."⁵

United States v. Jorn⁶ affirmed the dismissal of an information on double jeopardy grounds after the

trial judge, sua sponte, declared a mistrial when it appeared that government witnesses had not been properly warned of their rights. The trial was terminated to enable the witnesses to consult with attorneys. This action, termed erratic by the Supreme Court,⁷ was found not to be compelled by any manifest necessity or public justice. Moreover, the lack of preparedness by the government, which precipitated the mistrial, directly invoked the policies underlying the double jeopardy clause⁸ and the guaranty of a speedy trial.

Familiarity with the background procedural setting in this case is essential to an understanding of the reasons for declaring a mistrial. The complaint was filed on August 8, 1975 and defendant forthwith arraigned before a magistrate, who assigned counsel to represent defendant. An eight-count indictment was filed on October 16, 1975, charging defendant with conspiracy and making false applications for bank loans, in violation of Title 18, United States Code, Sections 371 and 1014; defendant pleaded not guilty; the case was assigned to us and a pretrial conference was called the same day.

All appeared for the pretrial conference, and defense counsel advised that ^{defendant} had a psychiatric history, that he would be examined by a psychiatrist and a psychologist, and that defense counsel would probably raise the issue of defendant's mental competency to stand trial, as well as his mental competency to commit the alleged crimes. The government sought an examination of the defendant by a qualified psychiatrist and later we signed a formal order submitted by the government. We set a competency hearing for November 24, 1975, to be followed by a trial immediately thereafter should defendant be found competent to stand trial.

The government's psychiatrist examined defendant and reported that he was competent to stand trial. Accordingly, a hearing was held on November 24 to determine that issue.

It appeared upon the hearing that neither the defense witness nor defense counsel was aware of what facts were material to the issue of competency to stand trial.⁹ Specifically, defense counsel did not seem to know what questions to ask, nor how to ask them, and the witness, manifestly without legal

guidance, was almost totally unprepared to testify. As a result, we were compelled to take over the examination, both of defense witnesses on direct ¹⁰ and the government's psychiatrist on cross. ¹¹

Upon completion of the hearing, we found defendant competent to stand trial, a jury was selected, and the trial began. During the first few minutes of defense counsel's opening statement, we were obliged to interrupt and warn him three times not to instruct the jury on the law. ¹² Nevertheless, he failed to heed our advice, and, by the fourth time, we were left with no choice but to conclude that counsel was either unwilling or unable to make a distinction between questions of law and issues of fact.

The charges against this defendant are that he knowingly made false statements of material fact in loan applications for the purpose of influencing the action of the bank and of conspiring to do so. The charges are not only serious but also raise close issues of knowledge, scienter and criminal intent, all turning on fine distinctions between truth or falsity, guilty knowledge or innocent mistake, etc. Such issues

are difficult enough, even when uncomplicated by an insanity defense. When such a defense is interposed on non-frivolous grounds, as was plainly the case here, it seems to us that the court has a special duty to protect the defendant from a miscarriage of justice.

Our assessment of counsel's ineptness and inability competently to represent his client, especially in light of the insanity defense, was not erratic, as in Jorn, but was based on a reasonable apprehension, fortified by long experience as a trial judge, that the accused would not be fairly represented. The constitution requires that a defendant in a criminal case be represented by counsel.¹³ The Criminal Justice Act was passed to assure that an indigent defendant in a federal court receive experienced and adequate representation.¹⁴ The Chief Justice has, however, warned of the disservice to the hapless client when the Act is used to provide on-the-job training for the amateur or inexperienced attorney.¹⁵

The federal courts have the duty to implement the policies embodied in the Criminal Justice Act, as well as to ensure the general fairness of a criminal

proceeding. This duty extends beyond the standards re-
quired by the constitution¹⁶ and must prevent even the
possibility of unfairness.¹⁷ A district judge, there-
fore, cannot always remain a passive bystander but may
have to intervene to assure that the facts of each case
are presented to the jury in a clear and straightfor-
ward manner.¹⁸ He must be especially careful to avoid
prejudice which may not be fully depicted in the record¹⁹
on appeal.

²⁰
In United States v. Dinitz, the trial judge
expelled defense counsel after he was unable or refused
to confine his opening statement to the facts he expect-
ed to show at trial. The judge presented defendant with
three alternatives: a delay pending appellate review
of the propriety of the expulsior; continuation of
the trial with another attorney; or declaration of a
mistrial. Defendant moved for a mistrial and the mo-
tion was granted. Before his second trial, defendant
made a motion to dismiss the indictment on double jeop-
ardy grounds, alleging that he had been forced into the
mistrial motion by the improper conduct of the first
judge. The Supreme Court held that since the expul-
sion of defense counsel was not motivated by bad faith

or a desire to harass or prejudice the defendant, and since the mistrial was declared on defendant's motion, the double jeopardy clause did not bar reprosecution. In his concurring opinion, however, the Chief Justice directed his attention to the propriety of the judge's conduct:

"[The trial judge] has plenary control of the conduct of counsel particularly in relation to addressing the jury.

An opening statement has a narrow purpose and scope. It is to state what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole. . . .

A trial judge is under a duty, in order to protect the integrity of the trial, to take prompt and affirmative action to stop such professional misconduct."²¹

Our exclusion of defense counsel was compelled by the same duty to assure a clear presentation of the case to the jury and to safeguard the rights of the defendant. Once it became clear to us that the lawyer assigned by the magistrate to represent this indigent defendant²² was too inexperienced, unprepared, and incompetent to present defendant's case to the jury, it became

our plain duty to abort the trial.

A court cannot stand idly by while the poor are assigned lawyers too inexperienced or incompetent to be retained on a competitive basis in the open market. Equal justice becomes a mockery when the quality of representation upon a criminal trial depends solely upon the accused's ability to pay.²³ Although the court can assure that each defendant is represented by an equally skilled attorney, a court must intervene when the quality of representation falls below the level necessary to achieve some semblance of the adversary process so essential to focusing issues of fact for enlightened resolution by a jury.

This court's declaration of a mistrial does not bar retrial of the defendant. Substantial harm could result if, because of the double jeopardy clause, a court felt compelled to allow a trial to continue although the accused was not adequately represented. It would be inconceivable to require a trial judge to rely on the chance that a cold record will shock the conscience of an appellate court when an incipient miscarriage of justice is growing before his eyes.

Defendant contends that our failure to use a lesser sanction constitutes an abuse of discretion. It is sufficient, however, that the trial judge had reasonable grounds to believe that justice would not be served by continuing the trial, and it is immaterial that with flawless hindsight less drastic means may appear to have²⁴ been sufficient to cure the defect. Moreover, no feasible alternative was available.

Ineptness and incompetence cannot be magically transformed to skilled advocacy during the course of a single trial. Nor can the unfairness inevitably resulting from an inept defense be cured or overcome by an instruction to the jury. We are also mindful of the potential prejudice to a defendant when a judge is continually forced to take over the questioning of witnesses or to correct or admonish the defense attorney.

It was perfectly clear from our vantage point of long and extensive experience on the trial bench that the burden of imposing a second trial on the defendant was minimal compared to the prejudice to his defense and the incipient miscarriage of justice developing before²⁵ our eyes.

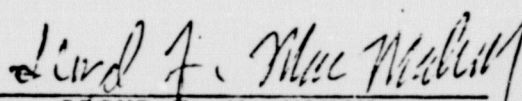
Defendant's suggestion of a continuance until new counsel could be appointed ignores the difficulty in finding substitute counsel, giving him sufficient time to prepare, and scheduling the resumption of trial amidst a congested calendar and at a time when the original jury and alternates could return. This court, given the problem presented and the exigencies of the situation, properly exercised its discretion in declaring a mistrial in order to protect the right of the defendant to competent representation.

Accordingly, defendant's motion to dismiss the indictment is denied in all respects.

So ordered.

Dated: New York, N. Y.

March 18, 1976


LLOYD F. MacMAHON
United States District Judge

FOOTNOTES

1 United States v. Dinitz, 44 U.S.L.W. 4309 (U.S.
Mar. 8, 1976); Green v. United States, 355 U.S. 184,
188 (1957).

2 United States v. Perez, 22 U.S. (9 Wheat.) 579,
580 (1824).

3 367 U.S. 364 (1961).

4 United States v. Gori, 282 F.2d 43, 46 (2d Cir.
1960) (En Banc).

5 Gori v. United States, supra, 367 U.S. at 368.

6 400 U.S. 470 (1971).

7 Illinois v. Somerville, 410 U.S. 458, 469 (1973).

8 United States v. Jorn, supra, 400 U.S. at 486.

9 Hearing transcript, p. 10.

10 Hearing transcript, pp. 7-9, 11-12.

11 Hearing transcript, pp. 25, 26, 29.

12 Trial transcript, pp. 1, 2.

- 13 Argersinger v. Hamlin, 407 U.S. 25 (1972); Gideon
v. Wainwright, 372 U.S. 335 (1963).
- 14 18 U.S.C. 3006A; 1964 U.S. Code Cong. & Admin.
News 2990; 1970 U.S. Code Cong. & Admin. News 3982.
- 15 "The Special Skills of Advocacy," delivered by
Chief Justice Warren Burger at Fordham University
School of Law, November 26, 1973.
- 16 McNabb v. United States, 318 U.S. 332, 340 (1943).
- 17 In re Murchison, 349 U.S. 133, 136 (1955).
- 18 United States v. McCord, 509 F.2d 334, 347 (D.C.
Cir. 1974), cert. denied, 421 U.S. 930 (1975); United
States v. Nazzaro, 472 F.2d 302, 313 (2d Cir. 1973);
United States v. Jacquillon, 469 F.2d 380, 387 (5th
Cir. 1972), cert. denied, 410 U.S. 938 (1973).
- 19 United States v. Gori, supra, 282 F.2d 43.
- 20 44 U.S.L.W. 4309.
- 21 44 U.S.L.W. at 4313.
- 22 After we declared the mistrial, we relieved the
attorney appointed by the magistrate and assigned
John H. Doyle, III, Esq., pursuant to the Criminal
Justice Act, 18 U.S.C. § 3006A, to represent defend-
ant.
- 23 Griffin v. Illinois, 351 U.S. 12, 19 (1956).

24

United States v. Gentile, 525 F.2d 252, 258 (2d Cir. 1975); United States ex rel. Stewart v. Hewitt, 517 F.2d 991, 996 (3d Cir. 1975).

25

United States v. Gentile, supra, 525 F.2d at 256.

1 Opening

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x

5 UNITED STATES OF AMERICA :

6 : 75 Cr. 992 S

7 DAVID LEE WILLIAMS, :

8 Defendant. :

9 ----- x

10 B e f o r e:

11 HON. LLOYD F. MacMAHON,

12 District Judge
13 and a jury

14 November 24, 1975
15 10:30 a.m.

16 APPEARANCES:

17 ALLEN BENTLY, Esq.,

18 JOHN BUSH, Esq.,

19 Assistant United States Attorneys

20 JOHN GUTTMAN, Esq.,

21 Attorney for the Defendant.

22
23
24
25

22a

(Case called)

MR. BENTLEY: Government is ready.

MR. GUTTMAN: Defendant is ready.

THE COURT: What is this order here? Is this tunc pro tunc or what?

MR. BENTLEY: The man originally appointed to examine the defendant, Dr. Portnoy, indicated he would be unavailable--

THE COURT: They appointed somebody else?

MR. BENTLEY: That is correct.

THE COURT: All right.

Let's proceed.

MR. BENTLEY: If I might, your Honor, one other matter. At counsel table with me is Vivian Rabin, a Belgian attorney. She is visiting this country to conduct a study on behalf of the Belgium Ministry of Justice of the American criminal system and has been spending some time with the United States Attorney's Office.

I have spoken to defense counsel and he has indicated he has no objection to her sitting inside the bar at counsel table where she can hear the proceedings because her English is poor and I would ask the Court's permission for that to be done.

THE COURT: Surely. Why don't you sit over

23a

1 Q:mg Weiss-direct 3
2 here in the first seat of the jury box and you can hear
3 very well.

4 Where are you from?

5 MS. RABIN: Liege, the French part of the country.

6 THE COURT: Let's proceed.

7 MR.BENTLEY: This is on for a competency hearing.

8 If the Court so desires, the Government would call Dr.
9 Pontius, although since it is the defendant's claim of
10 incompetency, it raises the question of whether perhaps
11 the defendant's witnesses should go first.

12 THE COURT: I think so.

13 Let's proceed.

14 MR. GUTTMAN: I call Dr. Norman Weiss.

15 N O R M A N W E I S S, called as a witness by
16 the defendant, having been first duly sworn, testified
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. GUTTMAN:

20 Q How are you presently employed?

21 A I am a psychiatrist.

22 Q Are you in private practice?

23 A For the most part, yes.

24 Q Could you tell us in what year you graduated
25 from medical school?

24a

Q:ing

Weiss-direct

A 1961.

Q What have you done academically or professionally since 1961?

A I had psychiatric training at Hillside Hospital between 1964 and 1967.

I had psychoanalytic training at Columbia Psychoanalytic Institute between 1967 and 1974.

In addition, I am a Diplomate of the American Board of Psychiatry and Neurology.

I am on the staff of Lenox Hill Hospital, Mt. Sinai Hospital, Mt. Sinai Medical School.

THE COURT: What was your medical school?

THE WITNESS: New York Medical College.

Q Do you do any teaching in psychiatry?

A At the present, no. But I have been on a teaching faculty at Columbia Medical School and Mt. Sinai.

Q Have you had an opportunity to examine the defendant David Lee Williams?

A Yes.

Q How long a period of time did you spend with him?

A I spent approximately one hour.

Q As a result of that examination, did you come to a conclusion or form an impression about the defendant's competency to stand trial?

25a

1

Q:mg

Weiss-direct

5

2

A Yes, I did.

3

Q Would you state what that conclusion or impression was?

4

5

A It was my opinion that Mr. Williams was not competent at the time of the examination to stand trial.

6

7

THE COURT: When did you examine him?

8

THE WITNESS: October 6, 1975, your Honor.

9

Q Could you refresh your recollection?

10

MR. GUTTMAN: I believe, your Honor, there may be a typo as to the date.

11

12

A October 6.

13

14

Q Doctor, would it refresh your recollection if I told you it was October 24 at 12:15 that you saw Mr. Williams?

15

16

A No, it was October 6.

17

Q And you had additional information --

18

19

A Yes, on October 24 I had the opportunity then to examine the report of psychological testing by Dr. Halboth.

20

Q I am confused.

21

22

You are correct, it was October 6 and you had an opportunity to examine additional data as of the 26th?

23

A That is correct.

24

25

Q In that examination did you have an opportunity to speak to Mr. Williams?

26a

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A Yes, I did.

Q Did you find him to be cooperative and truthful and candid with you?

A Yes.

Q Based on the information that he gave you what was your diagnosis or what diagnosis did you arrive at for Mr. Williams?

A My daignostic impression was that Mr. Williams was suffering from a chronic schizophrenic process.

Q Could you give us your opinion as to how long he could have been suffering from this disease or defect?

A Well, I would say that it was at least ten yares or eleven years' duration because there was evidence of hospitalization back in 1964 and I presume it went on even before then.

Q If someone had been suffering from the disease or defect that you suggested earlier and he went for the last ten or eleven years untreated, is it fair to say that his condition--

MR. BENTLEY: Objection. There is nothing in the record to support this one way or the other.

THE COURT: Sustained. There are no facts or basis.

Q Did you subsequently learn --

1 Q.ing

2 THE COURT: Did you take a history, Doctor?

3 THE WITNESS: Yes.

4 THE COURT: Could you tell us what you learned
5 in that history?

6 THE WITNESS: Yes.

7 The history indicated one or several hospitali-
8 zations at Rollman Hospital in Cincinnati, Ohio, back
9 around 1964, which included a course of electro shock
10 therapy.

11 According to the history also since then there
12 has been what appears to be a deteriorated state of life
13 adjustment where Mr. Williams has been marginal in his
14 ability to hold jobs as well as marginal in his social
15 relationships, a deteriorative trend over the course of
16 time.

17 Q Did you find any hallucinations or delusions in
18 the defendant?

19 A Yes. The main aspect of his mental status
20 was what I considered to be an active paranoid delusion.

21 Q How could that disease be acted out?

22 A Well, the fact it was a paranoid delusion was
23 based on several things: It was based on the id--

24 MR. BENTLEY: I object. This is beyond the scope
25 of a competency hearing.

THE COURT: So far I haven't had any questions

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Q:mg

Weiss-direct

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directed to his competency to stand trial.

Q What are the symptoms of the disease or defect that you found out?

A The symptoms of a fixed idea that I felt Mr. Williams felt compelled to act out, that the idea was of such a nature as to interfere with his proper judgment.

THE COURT: I am afraid it has not been made clear to you exactly.

What is your understanding of when a man is competent to stand trial?

THE WITNESS: There are two parts of it. His understanding of what the charge is and what his plea will be, how he has conceptualized his plea, his awareness of the system here, of an opportunity for a jury trial, the role of the judge, the attorney, the prosecutor attorney, the defending attorney.

THE COURT: I think I must put some specific questions to you.

Was he able to communicate with you?

THE WITNESS: Yes, sir.

THE COURT: Did he understand what you were saying and give responsive answers to your questions?

THE WITNESS: He appeared to understand what I was saying and he did give responsive answers though they

29a

1 were somewhat-- they were not necessarily cohesive. There
2 was a certain amount of confusion, I thought, in his think-
3 ing. There was a lack of precision in his answers. His
4 mind would tend to wander often.
5

6 THE COURT: You mean his answers were vague?

7 THE WITNESS: Yes, his answers were vague.

8 THE COURT: Did you ask him what he was charged
9 with?

10 THE WITNESS: Yes, I did.

11 THE COURT: What did he say?

12 THE WITNESS: To the best of my recollection, he
13 said that he was charged with falsifying statements for
14 credit cards.

15 THE COURT: Did you ask him what court those
16 charges were in?

17 THE WITNESS: No, sir, I don't believe I did.

18 THE COURT: Did he tell you?

19 THE WITNESS: No.

20 THE COURT: All right.

21 Q Did you ask him if he spoke to his attorneys, his
22 counsel?

23 A -- Yes, I did.

24 Q Did you ask him if he understood what his counsel
25 had said to him in terms of the charges and the defense and

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Q:mg

Weiss-direct

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trial?

A Yes, he seemed to understand that.

Q In your opinion, does he have a grasp of reality today in terms of the setting around him and the proposed trial?

A I think that he has a grasp of reality around these issues, yes.

Around other issues, no.

Q What other issues does he not?

A This is where the question or the issue of his delusion comes in. He has maintained an idea over many years, two ideas, I would say, having to do with his hospitalization ten years ago that the hospital had destroyed his mind and were out to make him crazy, as he said. He has equated his shock treatments at the time with electrocution and he has had the idea over many years that he was going to gain financial retribution from the Government.

What he described to me was the idea-- the alleged crime was his way of getting back from the Government what he felt that he had suffered at their hands ten years ago.

What he had confused was his behavior in the present against one government agency with a situation that occurred medically ten years ago.

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Q:mg

Weiss-direct

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It was my impression that he really could not understand the reality or the distinctions between the two nor could he properly understand the distinctions between electricit, as used in treatment and electricity as used in electrocution.

Q Is it your opinion that Mr. Williams maintains these delusional ideas or these ideas for getting even with the Government today at the present time?

A At the time of my examination, yes.

Q Is it your opinion that that impairs his ability to stand trial and aid in his defense?

A It is my opinion that it impairs his ability to participate in his defense, yes.

THE COURT: What do you mean specifically, Doctor?

THE WITNESS: Well, I feel that this is an active delusion, your Honor.

THE COURT: These are just words.

Can he communicate with his lawyer?

THE WITNESS: Yes.

THE COURT: Does he know what he did at or about the time he is accused of doing it?

THE WITNESS: Yes, I believe he does.

THE COURT: Does he know whether or not he did it?

1 THE WITNESS: Yes.

2 THE COURT: He has no delusion about that?

3 THE WITNESS: No, sir.

4 THE COURT: Does he know who, if anyone, was pres-
5 ent at the time he did it?

6 THE WITNESS: Yes.

7 THE COURT: Does he know when he did it?

8 THE WITNESS: Yes.

9 THE COURT: Does he know how he did it?

10 THE WITNESS: Yes, sir.

11 THE COURT: Does he know what he did?

12 THE WITNESS: Yes, sir.

13 THE COURT: And he tells you why he did it?

14 THE WITNESS: Yes, sir.

15 THE COURT: He says it was to get back at the
16 government?

17 THE WITNESS: Essentially that.

18 MR. GUTTMAN: No further questions.

19 MR. BENTLEY: No cross-examination, your Honor.

20 THE COURT: Thank you, Doctor.

21 (Witness excused)

22 THE COURT: Do you have any further witnesses?

23 MR. GUTTMAN: No, your Honor.

24 THE COURT: Proceed.

MR. BENTLEY: The Government calls Dr. Anneliese Alma Pontius.

ANNE LIESE ALMA PONTIUS, called
as a witness by the Government, being first duly
sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BENTLEY:

Q You are a psychiatrist, are you not?

A Yes, sir, I am.

Q And you are licensed to practice psychiatry in
the State of New York?

A Yes, sir, I am.

Q Are you certified by the American Board of
Psychiatry and Neurology in the field of psychiatry?

A Yes, sir, I am.

Q Where did you receive your psychiatric training?

A I received my psychiatric residency at McGill
University and under the auspices of the Massachusetts
training faculty in psychiatry.

Q Are you in private practice at this time?

A Yes, sir, I am.

Q Are you also connected with a hospital?

A Yes, sir.

Q What hospital?

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A New York University Hospital.

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Q In what capacity are you associated with that hospital?

5

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A I am an assistant attending -- I am a clinical assistant professor of psychiatry at New York University.

7

Q Do you hold any governmental positions?

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A I am on the list for medical advisors for the Department of Health, Education and Welfare and I had been invited as a visiting scientist from 1971 to 1972 at the National Institute of Mental Health.

12

13

Q And you have written about twenty articles in various professional journals, have you not?

14

A Yes, sir, I have.

15

16

Q You also have examined the defendant David Lee Williams, is that correct?

17

A Yes, sir, I have.

18

19

Q Is the gentleman seated at the counsel table in the brown jacket?

20

A Yes, sir, he is.

21

Q When did your examination take place?

22

A It took place November 20, 1975.

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Q Where did it take place?

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A It took place in my office.

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Q How long did you spend with the defendant?

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Pontius-direct

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A It was about two hours.

Q Have you also reviewed certain medical records concerning the defendant?

A Yes, sir, I did.

Q Those records consist of the psychiatric records from the Rollman Psychiatric Institute in Cincinnati?

A Yes, sir.

Q Do they also include the records of the New York Medical College?

A Yes, they do.

Q Did you also examine the reports submitted by Dr. Weiss and by Mr. Halboth?

A Yes, I did.

MR. GUTTMAN: Dr. Halboth.

Q Based on your examination and study of these materials, Dr. Pontius, have you formed an opinion as to whether or not the defendant David Lee Williams has the mental capacity to understand the nature of the charges against him?

A Yes, sir, I have.

Q What is that opinion?

A In my opinion he is capable of understanding the charges against him.

Q Based on your examination, have you been able

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2 to form an opinion as to whether or not the defendant David
3 Lee Williams has the mental capacity properly to assist
4 in his own defense?

5 A Yes, sir, I have.

6 Q What is that opinion?

7 A In my opinion he is mentally capable of properly
8 assisting in his defense.

9 Will you please tell the Court the basis for
10 your conclusions?

11 A The basis for my conclusions are my findings
12 after the psychiatric examination that he is without psychosis.

13 Q Did you find any impairment of his thinking process?

14 A No, sir, I did not.

15 Q Did you find that he suffered from any hallucina-
16 tions?

17 A No, sir. He mentions voices and seeing his dead
18 father and other people but he told me that only in his
19 childhood was he surprised at these voice and images and
20 ever since he has known that they are his own thoughts.

21 Q Did you find that he has a hard time holding things
22 in his mind and operating on them?

23 A No, sir.

24 Q Did your examination reveal any difficulty --

25 A No, sir.

1 Q:mg

Pontius-direct /cross 17

2 Q Did you find he suffered from any psychomotor
3 redardation?

4 A No, sir, he did not.

5 MR. BENTLEY: . No further questions.

6 CROSS-EXAMINATION

7 BY MR. GUTMAN:

8 Q Did you examine the various materials prior to
9 examining Mr. Williams or after examining Mr. Williams?

10 A I examined only the report by Dr. Halboth and
11 Dr. Weiss prior to my examination.

12 Q In your report you state that your diagnostic
13 impression is that it is a schizoid personality?

14 A Yes, I did.

15 Q Could you define that?

16 A A lonely person and he does feel lonely. He
17 is aware of his loneliness. He has an impoverishment of
18 human relationships but his realit esting is intact. He
19 has no formal thought disturbances either.

20 Q After examining the records from Rollman in
21 Cincinnati, Ohio, the Rollman Psychiatric Hospital, did
22 your opinion change?

23 A No, sir, it did not essentially.

24 Q Although they twelve years ago also classified
25 him as a schizophrenic defective type?

1 Q:mg
2 A Yes, I am aware of this but it did not change my
3 opinion.

4 Q Do you believe a schizophrenic defective type
5 could be cured in Mr. Williams or was it cured in Mr.
6 Williams?

7 MR. BENTLEY: Objection, it is not relevant to
8 the issues.

9 THE COURT: The second one is. If he had it, has
10 it been cured?

11 THE WITNESS: If he had it, and I have to under-
12 line "if," it cannot be cured but it can have remissions.

13 Q When you say "if" he had it, do you not credit
14 the reports that you read from Rollman Psychiatric Receiving
15 Hospital?

16 A Yes, sir, it is correct. I am not in agreement
17 with this diagnosis because it is not supported by suffi-
18 cient fact in my opinion.

19 Q Do you doubt that he was given electroshock
20 therapy and was given dosates of various drugs on a dai.y
21 basis?

22 A No, I do not doubt this.

23 Q What is it that you disagree with in the Rollman
24 report?

25 A Sir, there is no hard evidence that he suffered

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1 from hallucinations in the same manner that I just de-
2 scribed, that he uldhave been surprised about them, and
3 there are several statements in the report.
4

5 I made notes on this if you want me to state
6 them, where it is stated that he had no auditory or visual
7 hallucinations or hallucinations denied and so on.

8 I can give you the exact reports. I have made
9 notes of them.

10 Q That was on one particular date?

11 A On several dates.

12 Q What were the dates where there were hallucina-
13 tions and auditory --

14 A There were no hard, true hallucinations. If
15 voices were mentioned at all, it was not verified, whether
16 he would hve reacted to them as if they were real.

17 For a true hallucination, the psychiatrist has
18 to make a statement that the patient turned around, acted
19 surprised or acted frightened or made certain movements as
20 if they were real and there are none of these reports in
21 the file.

22 Q Suppose somebody heard voices not in the presence
23 of the psychiatrist; how could the psychiatrist say that
24 he turned around?

25 A No, he asked. The psychiatrist has to ask the

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Q:mg

Pontius-cross

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patient and so I did ask him and he said he did not turn around, not since early childhood. In early childhood he did turn around because he was surprised. But ever since then he knew that these were his own images.

He did not call the police seeing these people in his house. I asked him about this. He did not offer them any food or drink because he knew they were not quite real. They were different, he told me.

Q Are you then saying that the procedures at Rollman Receiving Hospital were done based on insufficient facts and data?

A Sir, I do not doubt that the procedures had any value. At this time shock treatment was used more freely than it would be at the present time. But I doubt that the diagnosis was substantiated enough in the record.

Q Let's assume for a moment that you are correct, that there was not enough in the record to warrant it, but nevertheless a series of some 20 or 25 electroshock treatments were given and some were of a duration of one or two seconds every day of the week.

What effect would that have on Mr. Williams or on a person?

A It would have the effect for about eight to nine months dulling his memory so that his memory would be

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[illegible]

A It is very unlikely and in this case I tested Williams. It certainly is not at present.

Q In reference to his memory, you stated in your

A I do not recall that, sir. Anyhow, I asked him

Q And you asked him to multiply, I believe it was

Q And his answer to you was 72?

Q And then he changed his mind after you asked
to do it again?

A He made one mistake and corrected it immediately

A No, I don't give suggestions.

Q What would be your conclusion if I told you that

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A If he would have lapses of memory to the present that would be an organic brain syndrome most likely.

Q Could you describe that, please?

A It would have been due to an organic damage to his brain.

Q Could electroshock therapy cause such an organic brain damage?

A For about eight to nine months afterwards. But hardly ever longer.

Q Did not Mr. Williams tell you that he could not remember the recent past or had no memory of it but gave you in great detail things many, many years ago?

A No, sir. He also gave me his recent past. I asked him what he made for dinner the day before and he gave me a complete menu. He had no gross lapses of memory. He said that on certain days he was somewhat vague but this is within normal limits in my view.

Q Normal limits of what?

A Of not remembering every detail of years back.

Q Did you ask him about his family?

A Yes, sir, I did.

Q What did he say about his family?

A He said that he had five brothers who lived and he has not seen them and he has one sister in New Jersey and

43a

Q:mg

Pontius-cross

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he has not seen her and that his mother is alive and his father died when he was a child.

Q Suppose I told you that his mother actually died in 1959 and that in fact he told you that his mother is alive, what would that be indicative of?

A Well, it could be many things, sir. If it were an isolated memory lapse it might have an emotional reason. But if there were other memory lapses like that then it might be an organic brain syndrome.

But you would have to have more data of a similar memory lapse to make such a diagnosis, plus other signs.

Q But it is possible that having--

A Everything is possible but not probable.

Q But his mother dying in 1959 and in 1961 having some 20 to 25 electroshock treatments and in 1975 telling you that his mother is alive, would it then be your opinion that possibly some of the organic brain syndrome and the psychoses would be present today?

A Not necessarily, sir. There have to be other signs to make the diagnosis of an organic brain syndrome plus other lapses of memory that are not so emotionally charged as the death of a mother.

Q Such as?

A For instance, whether he signed loan applications

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Q:mg

Pontius-cross

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or whether he worked for the City and made \$18,000 a year, how long he worked at this job, which he told me was three to four years, whether he joined a drug methadone program. He gave me data.

Q Did you question him about his joining a drug program?

A Yes, sir, I did.

Q Do you remember what he said?

A He said that he went to the Flower-Fifth Avenue clinic.

Q How often?

A I do not think I asked him how often.

Q For how long a period of time?

A I do not recall this, sir.

Q Did he tell you he was employed?

A Yes, sir, he did, at certain times. Not presently. Presently he said he was not employed.

Q If I tell you he was never employed at the places that he told you, together with the delusion of the emotional nature of his mother being dead, and again the electroshock therapy, would you then change your opinion as to your diagnosis?

A Not necessarily. It would have to be broken down because you are talking about different symptoms, sir, in

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Pontius-cross

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one entence. It would not necessarily be my conclusion.

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MR. BENTLEY: I would like to find out what the basis is for this question, whether there is a good faith basis for his question.

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MR. GUTTMAN: That his mother is dead?

7

MR. BENTLEY: The question about his employment, whether the employment facts were incorrect.

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It also appears to me that this is going far beyond the scope of the issues presented on this type of hearing.

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THE COURT: I will let it go. It certainly is way outside, there is no question.

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MR. GUTTMAN: The part about the employment is contained in the 3500 material that Mr. Bentley handed me in reference to the defendant's own statement saying he was unemployed since July 1974 which is over a year and some prior employment does not show the City at some place called the Third Avenue Plumbing and Dr. Pontius said something about a city job, if I am not mistaken.

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MR. BENTLEY: The fact is --

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THE COURT: Your questions are not directed to the issue, Counsel. The issue is whether he understands the nature of the charges and is able to communicate and cooperate in his defense; not whether he was working or

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Q:mg

Pontius-cross

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whether he was not or whether he thinks he was or was not.

MR. TUTTMAN: All of these various statements which are in fact not true, but he believes them to be true, is a sign of Mr. Williams' lack of sense of reality. The fact that he tells a doctor that his mother was alive in 1975 and she in fact died in 1959.

THE COURT: I am quite capable of understanding that but that has nothing to do with the issues.

Q Dr. Pontius--

THE COURT: Let me ask you, is a schizophrenic able in some-- some schizophrenics able to cooperate with their counsel, to understand the nature of the charges; in other words, the mere fact that someone might have schizophrenia does not automatically mean that they are incapable of standing trial.

THE WITNESS: Yes, sir, it does not automatically mean that.

Q In your report, you say that Mr. Williams told you that at the age of I believe-- that at a childhood experience he saw a young man being electrocuted by a live wire and he connected that with the electroshock therapy?

A Yes, sir.

Q And he maintains that delusion today?

A Yes, sir, he has this delusional belief but I

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2 have to add that when you explained to him that they are
3 not alike, he listened intently and he did not continue
4 to maintain that belief.

5 This is a belief that is also culturally sup-
6 ported because many persons that are lay persons in that
7 field may make that connection. So it is not a bizarre
8 type of connection to make which would then make it a
9 bizarre psychotic type of delusion.

10 Q Are you in private practice?

11 A Yes, sir.

12 Q Do you treat your own patients who are schizo-
13 phrenic?

14 A Yes, sir.

15 Q Have you ever had the experience where, by sitting
16 down a schizophrenic and telling him that something he
17 believes is not true, therefore the delusion disappears?

18 A If it is a bizarre type of delusion, sir, it
19 does not just disappear like that. It would take months.

20 MR. GUTTMAN: Thank you very much.

21 I have no further questions.

22 REDIRECT EXAMINATION

23 BY MR. BENTLEY:

24 Q Doctor, you indicated in your cross-examination
25 that when you explained to the defendant the difference

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between an electrocution and electroshock therapy he desisted from maintaining that position that these were the same things, is that correct?

A Yes, sir.

Q Is that behavior characteristic of a schizophrenic?

A No, sir.

RECROSS-EXAMINATION

BY MR. CUTTMAN:

Q Then what is that behavior consistent with?

A Consistent with culturally-supported belief that is supported by the press at the present time, having all kinds of statements made in the press, what electroshock treatment could do to a brain and it is a belief that is quite prevalent at the present time supported through the press in the general public that electroshock does harm to the brain.

Q When was the last time you read in the newspapers anything about electroshock therapy?

MR. BENTLEY: Objection.

THE COURT: Sustained.

MR. CUTTMAN: The doctor is saying--

THE COURT: Sustained.

Q When was the last time you read about electro-

49a

1 shock therapy discussed in the newspapers?

2 A I read it in the medical magazines.

3 MR. BENTLEY: Objection.

4 Q Would you believe Mr. Williams has access to
5 those medical magazines?

6 MR. BENTLEY: Objection.

7 THE COURT: Sustained.

8 A He told me himself--

9 MR. BENTLEY: There is an objection sustained to
10 this line of questioning.

11 THE COURT: Sustained.

12 Your questions are not directed to the issue.
13 They are argumentative, bad in form. They are horrible.

14 Q Dr. Pontius, what is it in the cultural back-
15 ground that gives support to this delusion that you found
16 in Mr. Williams?

17 A He told me that he was born with a veil over his
18 head and that in the South this makes a person able to
19 see things that other persons do not see, such as that he
20 can conjure up the image of his dead father, that he knows
21 he is dead but he considers it a gift and is not frightened
22 by such images.

23 He also said that he had heard about electro-
24 shock treatments doing bad things to the brain. So I do
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not know whether he read it or heard it by word of mouth.

Q What is your opinion as to this cultural background that he has that he was born with a veil and can conjure--

MR. BENTLEY: Objection. It is irrelevant and beyond the scope of redirect.

THE COURT: Sustained.

MR. GUTTMAN: No further questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: Does the Government rest?

MR. BENTLEY: Yes, your Honor.

THE COURT: The defense rests?

MR. GUTTMAN: Yes.

THE COURT: The Court finds the defendant competent to stand trial. He plainly understands the nature of the charges.

Based on Dr. Weiss' testimony alone, he is able to communicate with counsel; also based on Dr. Weiss' testimony and surely that is fully corroborated by the testimony of Dr. Pontius.

Proceed.

MR. GUTTMAN: Before we draw the jury panel up, I would like to present a slight problem.

Dr. Weiss and Dr. Halboth --- if I understand the scheduling of the proposed trial, we will spend approximately the rest of the morning selecting the jury and in the afternoon --

THE COURT: I would not imagine we would be ten minutes selecting this jury. There is no reason why we should be any longer.

MR. GUTTMAN: In the afternoon, the Government will present its case. Mr. Bentley has indicated that it is a rather fair amount of a case but I presume that in scheduling -- I asked Dr. Halboth and Dr. Weiss to be back here tomorrow morning.

THE COURT: No, today. We will be at it easily today, easily. I am quite willing to take them out of order if that will suit your convenience.

Why can't we take them first out of order?

MR. GUTTMAN: Dr. Halboth informs me he has a one o'clock class.

THE COURT: We can hear them first. It is agreeable to the Court to take them out of order to accommodate them.

DR. WEISS: I have to be in my office at 12:15.

THE COURT: I will have you there. We will proceed first and confine ourselves to the issues. We have

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a lot of other work, Doctor. Other people are waiting and I am sorry you have to. It is one of your obligations as a citizen.

Get the jury up, please.

Is there any objection to taking the doctors out of order?

MR. GUTTMAN: No.

MR. BENTLEY: No, your Honor.

THE COURT: I will just tell the jury that we will take all medical testimony out of order and get it out of the way and then they will be free to go.

(Recess)

(Panel of prospective jurors sworn)

(Jury duly impaneled and sworn)

(Alternate jurors duly sworn)

THE COURT: All right, Mr. Bentley.

MR. BENTLEY: This is a federal criminal case in which the defendant David Lee Williams is charged with two different crimes and committing one of those crimes a number of times.

The first crime was the crime of conspiracy; conspiracy to make false statements on loan applications to federally insured banks.

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2 The other crime is making those false statements
3 on those loan applications.

4 The defendant is the man you see seated at the
5 table at the rear of the courtroom, the second table back.

6 Other people who saw him did not know him as
7 David Lee Williams. They knew him as Donald Fernandez,
8 Samuel Johnson, Louis Jackson and other names.

9 My name is Allen Bentley, Assistant United
10 States Attorney, and my job is to present the evidence to
11 you on behalf of the Government in this case.

12 With me at counsel table is John Bush, who is
13 also an Assistant United States Attorney and will be as-
14 sisting me in this matter.

15 How is the Government going to prove that the
16 defendant Williams submitted false information on loan
17 applications to federally insured banks on a number of oc-
18 casions between the months of March 1975 and last July?
19 And how is the Government going to prove that these loan
20 applications were part of a conspiracy wherein this defend-
21 ant had agreed with other people to coordinate their actions
22 so that these false loan applications would actually be
23 approved by the banks and loans would be issued?

24 Well, ladies and gentlemen, we are going to pre-
25 sent to you the loan applications themselves. We are going

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to present to you the testimony of an expert witness who has analyzed these loan applications, compared them with known handwritings of the defendant Williams and reached the conclusion that as to all but one of these applications the handwriting was that of the defendant Williams.

As to the application that for various reasons could not be identified, we are going to present to you the testimony of the bank employee who actually dealt with Williams and made that loan to him.

Furthermore, we are going to present testimony showing that when he was apprehended and confronted with the facts of this situation, the defendant Williams admitted that he had filed these loan applications, that the information on these applications was false and that he had worked with other people to arrive at the result of having these applications approved.

Well, what was the false information?

First of all, the names obviously. Donald Fernandez, Samuel Johnson, Louis Jackson. It is hard to think of any names that could be more blatantly untrue for a person whose name is David Lee Williams.

The other loans were made out in the names of David Latimore Williams, Dary Williams, Dary Larry Williams. That is not a major discrepancy between David Lee and Dary.

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1 Qing
2 In addition, on each of these loan applications
3 the employment of the applicant was fraudulently stated.

4 On the first one that we are going to present to
5 you, that Mr. Williams stated that he worked at the Bronx
6 River Youth Council or the Bronx River Education Action
7 Committee.

8 He did not work there. He had not worked there
9 since 1971.

10 On that second loan the bank got suspicious.
11 They called in for a co-maker. They said, "We don't trust
12 this Donald Fernandez, let's have somebody else come down
13 and sign on the dotted line also."

14 So someone else came into the bank, a man named--
15 who said he was Sherman Etra and co-signed that loan.

16 Well, of course, it was not the real Sherman Etra.
17 Fernandez was not Fernandez, he was Williams. But at that
18 time Williams evidently got word, realized that someone
19 had checked out this Bronx River Education Committee so
20 the final four applications were listing a separate em-
21 ployer, American Business Group.

22 We are going to have someone here from American
23 Business Group to tell you that this individual never was
24 employed by American Business Group.

25 When he was apprehended and made the statements

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1 that I mentioned to you before Williams was searched and
2 on his person they found first of all the Board of Elections
3 card that this so-called Sherman Ktra had presented to
4 Manufacturers Hanover Trust Company about two, three months
5 before.
6

7 They also found credit cards in the name of
8 Samuel Johnson, Louis Jackson, voter registration cards in
9 various names, and even a blank voter registration card.

10 They also found a photo identification card that
11 said Dary Williams, American Business Group.

12 Well, Mr. Goldo from American Business Group
13 will tell you that they never issued such a card, it is
14 not a valid card.

15 What does the defendant say about all this?

16 It appears at this time that there isn't too
17 much dispute although Mr. Guttman, his lawyer, can tell
18 you better what his side of the case is, but it appears
19 that you will be hearing in this case, ladies and gentlemen,
20 psychiatric testimony to suggest that Mr. Williams was not
21 responsible for the conduct with which he is charged in
22 this case.

23 As you listen to that testimony, I want you to
24 think very carefully about the facts of the case and ask
25 yourselves would a man who is not legally responsible, a man

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1 whose actions are the product of a mental disease or de-
2 fect, a man who is unaware of what he is doing is wrong
3 or who is unable to control his actions, he is swept along,
4 would he have committed a crime like this?
5

6 When you see the detail, preparation, careful
7 coordination between this defendant and others whom we know
8 about and some we don't know who they are, I think when
9 you hear that testimony concerning the facts of this case
10 and place that beside the testimony of the expert witnesses
11 that will be presented both by the defense and by the Govern-
12 ment, you will conclude that the defense of insanity in
13 this case is just as bogus as the loan applications them-
14 selves, just an attempt to escape responsibility for a
15 carefully planned and premeditated criminal conspiracy
16 and a series of criminal acts.

17 This will not be a long trial. The basic facts
18 will probably not be disputed, the facts concerning the
19 offenses themselves, that is.

20 However, it is an important case because it is
21 a criminal case. It is very important to the defendant.
22 It is also important to the Government which is charged
23 with enforcing the laws concerning false statements to
24 federally insured banks.

25 I ask that you consider the evidence carefully

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Q:mg

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and follow his Honor's charge on the law, and if you do
that, I am sure that you will reach a just verdict.

...

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UNITED STATES OF AMERICA

vs.

75 CR 992 S

DAVID LEE WILLIAMS

(Opening statement of Mr. Guttman)

MR. GUTTMAN: Good afternoon, Ladies and gentlemen, my name is John Guttman. I represent Mr. David Williams. The defense in this case contends that Mr. Williams is not legally responsible for what he may have done but the threshold question that you must decide is did the government prove that he did do what they charge him with?

It sounds like I am talking out of two sides of my mouth but let me explain. The government has the obligation and the burden --

THE COURT: Leave the law to the court.

MR. GUTTMAN: -- of proving the elements of the crime beyond a reasonable doubt. It's their burden of proof. The judge will explain that to you. You must be convinced that the government has proven what it said it will prove. If you are not convinced --

THE COURT: Mr. Guttman, please leave the law to the court. Do I make myself clear?

MR. GUTTMAN: I am not talking about the law, Judge.

1 jqr 2

2 THE COURT: Yes, you are.

3 MR. GUTTMAN: Then we get to the second part of
4 that question, that if you are convinced that he did do
5 what the government said he did, was he legally responsible
6 for those acts? If you find that the government has not
7 met its burden you don't have to consider the question of
8 whether --

9 THE COURT: Please, Mr. Guttman.

10 MR. GUTTMAN: How can I explain my insanity
11 defense --

12 THE COURT: Say what you intend to prove and not
13 what the law is. Please don't make me call that to your
14 attention again.

15 MR. GUTTMAN: I will call witnesses to tell you,
16 ladies and gentlemen of the jury, what was done to Mr.
17 Williams in the past, what was done to Mr. Williams in the
18 near past, what Mr. Williams suffers from, why he suffers
19 from those mental defects, how it came about, what tests
20 were done to him, what people have said in reference to his
21 illness and I am sure you will be convinced, as I am, that
22 Mr. Williams is not legally responsible for what the govern-
23 ment claims he did.

24 But first there is the presumption of innocence.
25 He is presumed innocent. You are not to decide whether he

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is innocent or guilty. You are to decide whether he is
guilty. He is presumed innocent --

THE COURT: Please, Mr. Guttman. Would you like
to put this robe on? I am sorry, I must declare a mistrial.
This defendant is not competently represented.

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA, :

5 vs. :

75 Cr. 992

6 DAVID LEE WILLIAMS, A/K/A :
7 "DAVID LATTIMORE WILLIAMS," :
8 "DONALD FERNANDEZ," " SAMUEL :
9 JOHNSON," "LOUIS JACKSON," :
10 "DARRY L. WILLIAMS, " " DARRY :
11 LARRY WILLIAMS," and :
12 JOSE SANCHEZ, :

13 Defendants. :
14 -----x

15 BEFORE: HON. LLOYD F. McMAHON, D. J.

16 New York, N. Y.
17 October 16, 1975
18 4 P. M. - Room 906

19 APPEARANCES:

20 PAUL J. CURRAN, ESQ.,
21 United States Attorney for the
22 Southern District of New York
23 Attorney for Government
24 BY: IRA H. BLOCK, ESQ.,
25 Assistant United States Attorney

FEDERAL DEFENDERS SERVICES UNIT,
Attorneys for Defendant Williams,
BY: JOHN GUTMAN, ESQ.,
MARK LANDSMAN, ESQ.,
Attorney for Defendant Sanchez.

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1
2 THE CLERK: United States of American versus
3 David Lee Williams and Jose Sanchez.

4 Pretrial conference and arraignment.

Court

5 THE COURT: The/called this conference early here,
6 first to set a trial date, and, second, to seewhether there
7 are any preliminary matters we can handle at this time.

8 I take it everyone has pleaded to the indictment?

9 MR. BLOCK: Your Honor, I might inform the court
10 that as the defendants' attorneys walked in this afternoon
11 I gave them copies of a superseding indictment that was
12 filed earlier today, and the defendant Sanchez has not been
13 arraigned on this indictment at all, and defendant Williams
14 has not been arraigned on the superseding indictment.

15 So perhaps the first order of business might be
16 to arraign them.

17 THE COURT: All right, we will proceed.

18 THE CLERK: Mr. Williams --

19 MR. GUTMAN: We will waive the reading.

20 THE CLERK: Waive the reading of superseding
21 indictment 74 Cr. 992?

22 MR. GUTMAN: Yes.

23 THE CLERK: How do you plead to the superseding
24 indictment?

25 DEFENDANT WILLIAMS: Not guilty.

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THE CLERK: Mr. Sanchez, do you waive the detailed reading of the superseding indictment, 75 Cr. 992?

3

4

MR. LANDSMAN: Yes, he waive.

5

6

THE CLERK: How do you plead to the superseding indictment?

7

DEFENDANT SANCHEZ: Not guilty.

8

MR. LANDSMAN: Not guilty.

9

THE COURT: Do both defendants have counsel?

10

11

12

13

MR. BLOCK: Yes, your Honor. Mr. Williams is represented by Federal Defenders Services Unit, and Mr. Sanchez is represented by Mr. Landsman, who is a C. J. A. attorney in this case.

14

THE COURT: Both assigned counsel, are they?

15

MR. BLOCK: That is correct, your Honor.

16

17

THE COURT: Don't counsel have a voice here? I see the assistant popping up. I am addressing them.

18

Are you assigned?

19

20

MR. LANDSMAN: I am assigned pursuant to C.J.A., yes.

21

THE COURT: Your name is what?

22

MR. LANDSMAN: Mark Landsman.

23

THE COURT: And Mr. Gutman?

24

MR. GUTMAN: Yes, sir.

25

THE COURT: You are assigned, are you?

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MR. GUTMAN: Yes, I am from the Legal Aid Society.

THE COURT: Legal Aid, all right.

Now, I would like to try this case at an early date.

MR. GUTMAN: If your Honor would consider the week of November 24th. I had a brief conference with Mr. Block, and that date, subject to the court's approval apparently meets the schedules of everyone.

THE COURT: That goes right into the Thanksgiving holiday. I don't like it for that reason.

MR. GUTMAN: Would your Honor consider the week after.

THE COURT: No, I think it is too late, as well. I would think we ought to try this case no later than the 17th.

MR. GUTMAN: Well, I have two trials set for the 17th, one before Judge Stewart and one before Judge Metzner which I am trying to work out at this time, and I believe Mr. Block's schedule is -- well, I will let him speak for himself.

MR. BLOCK: Your Honor, I am scheduled to be on trial before Judge Pollack starting on November 5th, and I would anticipate that that trial would take about five trial days, and those are two short weeks because of holidays;

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2 but if the week of the 17th is the only week we can agree
3 upon I can be ready, or the government would be ready if I
4 am not; someone else will try it.

5 MR. GUTMAN: As I stated, I am on a firm trial
6 date with Judge Metzner and Judge Stewart --

7 THE COURT: Is the Legal Aid inflexible about this?

8 MR. GUTMAN: Well, we try to keep some sort of
9 continuity so that the defendant knows a lawyer is his
10 lawyer and he can confer with him --

11 THE COURT: I wish Legal Aid would not come to me
12 with lawyers who are tied up for the next several months.
13 I have had to bump Legal Aid lawyers for just that reason.
14 It seems to me we defeat the speedy trial law when we go into
15 these unnecessary delays.

16 How long would it take to try this case?

17 MR. BLOCK: I would expect about a day and a half,
18 Your Honor.

19 THE COURT: It doesn't strike me as a very
20 complicated case, from the indictment.

21 MR. BLOCK: That is correct. There might be
22 several witnesses but no one witnesses testimony is very
23 involved. I would expect that there would be a handwriting
24 expert, and his testimony would be the most complex.

25 THE COURT: I don't see where a handwriting expert

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2 could be very complex. It is just: Have you compared the
3 signatures and studied the signature and is one similar to
4 the other, and that's about how long his testimony ought to
5 take.

6 How long are you tied up, Mr. Gutman?

7 MR. GUTMAN: The week of the 17th I am tied up.

8 THE COURT: The whole week?

9 MR. GUTMAN: Well, there are two trials, depending
10 on whether Judge Stewart relents or gives way to Judge
11 Metzner, or Judge Metzner gives way to Judge Stewart. I
12 haven't been able to get an answer from Judge Metzner's
13 chambers as to what he intends to do.

14 Subject to the court's convenience I would have
15 no objection, if the court does not particularly like the
16 week of Thanksgiving, the week after.

17 THE COURT: I have other commitments too, unfortun-
18 ately.

19 MR. GUTMAN: I am saying, subject to the court's
20 approval.

21 THE COURT: Do you anticipate the defense is going
22 to take much time?

23 MR. GUTMAN: No, your Honor.

24 THE COURT: All right, the 24th at 10 o'clock.

25 THE CLERK: Courtroom 1305.

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MR. GUTMAN: Thank you very much, your Honor.

THE COURT: Just a minute, we are not through yet.

If there is to be a disposition of this matter I would appreciate your doing it next week so that I can clear my desk.

MR. LANDSMAN: Your Honor, I haven't spoken up about the date of trial or anything, and maybe it is just as well because I have quite a few commitments in other districts, but I think we can dispose of my end of this case today if your Honor has the time. I discussed this with the United States Attorneys; we have been arraigned, and I think we have agreed on a disposition, and if your Honor is agreed on a date with Mr. Gutman, then we can proceed to my end of it.

THE COURT: We will proceed to your case in just a moment, if that's the situation.

MR. LANDSMAN: Very good.

THE COURT: Now Mr. Gutman, what do you want from the government here by way of discovery?

MR. GUTMAN: Mr. Block has been more than fair. Prior to the superseding I have gotten almost all that I need. I don't foresee any problem. I just simply call him up, and he has been most accommodating.

1
2 THE COURT: Is there any pretrial relief of any
3 kind that you want from the court?

4 MR. GUTMAN: Not that I foresee at this moment.
5 This is the first time I have seen this indictment.

6 THE COURT: I want to avoid a lot of extra work
7 for Legal Aid or anyone else, and you are now in court and
8 I am available now for any oral motions that you have and
9 to explore any motions.

10 MR. BLOCK: Your Honor, I would like to inquire
11 of Mr. Gutman through the court if he expects there will
12 be need for a suppression hearing. In that case there might
13 be additional witnesses; in fact, there would be additional
14 witnesses which the government would have to prepare.

15 THE COURT: Do you contemplate a suppression
16 hearing?

17 MR. GUTMAN: Within a matter of a day I will let
18 the court know. I will just go over the indictment with
19 the defendant, but in more detail than I have, and if there
20 should be I will immediately notify Mr. Block.

21 THE COURT: I would like to know immediately
22 about that. I would like to know what they are, whether
23 they are of any substance, whether we are going to have any
24 evidentiary hearings, and, if so, we will do that, and I
25 would like to know that now. It shouldn't take you very

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2 long to make up your mind.

3 Why don't I handle the other matter and you talk
4 with your client.

5 MR. GUTMAN: Your Honor, I have two other courts
6 to go to. As I said --

7 THE COURT: I am sorry, you are in this court
8 now. The other courts can wait. This is an appointment
9 we made. I am sorry.

10 MR. GUTMAN: You're asking me to make a decision
11 in a matter of minutes --

12 THE COURT: Yes, that is exactly what I am asking
13 you, whether you contemplate a suppression motion or whether
14 you do not. I don't think that that's any astronomical
15 decision.

16 MR. GUTMAN: Would your Honor permit me to take
17 the defendant to my office to talk to him?

18 THE COURT: Surely. I will be here. Take him
19 wherever you want. There is an office back there where
20 you can talk to him. I just want to be able to schedule
21 my work properly.

22 All right, let's proceed with this matter.

23 MR. LANDSMAN: Your Honor, after consultation
24 with my client, the defendant and the United States Attorney,
25 the defendant Jose Sanchez, offers to withdraw his plea of

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not guilty heretofore entered and offers to plead to the first count of this indictment, the conspiracy count.

THE COURT: Would you suggest which overt act --

MR. LANDSMAN: I believe there is only one overt act that even names him, which is number 3, your Honor.

THE COURT: All right, we will inquire about that.

MR. GUTMAN: Your Honor, may I interrupt a moment so we can end with my part?

THE COURT: Yes.

MR. GUTMAN: Based on the information I've gotten so far from the government, I don't foresee a motion to suppress.

THE COURT: All right. If you change your mind, Mr. Gutman, I would appreciate your advising the court early in the week, inasmuch as I am assigned to sit out of the district commencing next Friday for a difficult criminal trial, and I would like to clear up any of these preliminary matters before that, if we can.

MR. BLOCK: Your Honor, may I make another inquiry to the court of Mr. Gutman?

THE COURT: Yes.

MR. BLOCK: In a conversation he mentions the possibility he was exploring a medical or psychiatric defense to the charge.

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2 I would also like to know at the earliest
3 opportunity if he intends to put on such a defense.

4 MR. GUTMAN: I don't know yet.

5 THE COURT: Well, would you let me know as soon
6 as you can?

7 MR. GUTMAN: Absolutely.

8 THE COURT: And let the assistant know. And come
9 before me sometime Monday and make a record of it so that
10 we know.

11 All right?

12 MR. GUTMAN: Surely, your Honor.

13 MR. BLOCK: Thank you.

14 THE COURT: Mr. Gutman, in the future I would
15 appreciate your coming to pretrial conferences which I call
16 prepared to do it this way. I know every judge conducts
17 it differently, but this is your first appearance before
18 me, and now you know how I conduct it, and in the future if
19 you will explore these matters ahead of time I think it
20 would save both you and the court a lot of time.

21 MR. GUTMAN: Yes, I will, Judge.

22 THE COURT: All right, proceed with the other
23 defendant.

24 THE CLERK: Jose Sanchez, this indictment was
25 filed October 16, 1975, 75 Cr. 992.

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